

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 05, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1900

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JUDY HAGNER,

Plaintiff-Appellant,

v.

**HERBERT USOW,
JODY USOW and
ROBERT SHERRY,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS P. DOHERTY, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Judy Hagner, *pro se*, appeals from an order dismissing her action for failure to state a claim. She argues that the trial court erred because her pleadings did state a cause of action. Her *pro se* complaint sought recovery of monetary damages from her former attorney, Herbert Usow, and two other members of his firm, Robert Sherry and Jody Usow (collectively,

Usow). The trial court granted the motion for dismissal, concluding that: (1) “the pleadings [were] unintelligible and ... d[id] not constitute an appropriate cause of action;” and (2) Hagner “failed to appear in opposition to the motion” to dismiss. Additionally, Usow petitions this court to issue an order awarding frivolous appellate costs and fees pursuant to § 809.25, STATS.

We affirm because the trial court correctly concluded that Hagner's complaint failed to state a claim upon which any relief could be granted.¹ Further, we deny Usow's motion for frivolous costs.

Hagner retained Usow and his law firm for an initial retainer fee of \$300 to represent her in an action to overturn a temporary restraining order. Subsequent to a court appearance, Usow was “fired” by Hagner for what Hagner alleges was “insubordination” because the firm “REFUSED TO RESCEND,[sic] VACATE, VOID OUT TRO AND COURT INJUNCTION ORDER OF HARRASMENT [sic].” (Upper casing in original.) Hagner later filed for bankruptcy and for fee arbitration through the Milwaukee Bar Association to determine the disposition of the \$300 retainer.

Hagner filed suit naming Herbert Usow, Robert Sherry, and Jody Usow as defendants. In her complaint, Hagner sought: (1) a refund of the \$300 retainer fee; (2) \$40 million, plus interest, for “PAIN AND SUFFERING UNDUE HARDSHIP AND INTENT TO HARM” her; (3) “CONTEMPT OF COURT CHARGES” FOR \$1,000; (4) “VOID OUT ROBERT SHERRY [sic] LAW LICENSE.” (Upper casing in original.) She additionally alleges that she was physically assaulted by Herbert Usow and Robert Sherry after the fee arbitration hearing.

“Whether a claim for relief exists is a question of law which this court reviews independently, without deference to the circuit court.” *Paskiet v. Quality State Oil Co.*, 164 Wis.2d 800, 805, 476 N.W.2d 871, 873 (1991). “In determining whether a claim for relief has been stated the facts as alleged in the

¹ Hagner also filed two separate documents with the court that she refers to as motions for “summary judgment.” They are irrelevant to the disposition of this appeal and we therefore do not address them.

complaint must be accepted as true.” *Id.* Further, the “complaint must be liberally construed to do substantial justice and, if reasonably possible, construed to state a cause of action.” *Id.* (citation omitted). “We will affirm an order dismissing a complaint for failure to state a claim only if, upon review of the allegations contained therein, it appears to a certainty that no relief can be granted under any set of facts which plaintiffs could prove in support of them.” *Id.* (citation omitted).

Even giving Hagner's complaint the liberal construction to which it is entitled, we are unable to conclude that it states a cause of action. The trial court properly characterized the pleadings as “unintelligible.” Hagner's complaint is a series of disjointed, garbled, and incomprehensible allegations. She provides no coherent basis for a cause of action, nor does she provide sufficient facts, that, if taken as true, would support any alleged causes of action. *See id.* The trial court properly granted Usow's motion to dismiss.

Usow moves this court for frivolous costs upon this appeal. Section 809.25(3), STATS., provides that an award of costs shall be made if an appeal is found to be frivolous. Subsection (3)(c) provides:

- (c) In order to find an appeal or cross-appeal to be frivolous under par. (a), the court must find one or more of the following:
1. The appeal or cross-appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.
 2. The party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

This court decides the question of frivolousness *de novo* when we conclude that no findings of fact are necessary for resolution of the issue. *Vierck v. Richardson*, 119 Wis.2d 394, 399, 351 N.W.2d 169, 172 (Ct. App. 1984). Usow

argues that because Hagner's complaint failed to set forth a basis for relief, as determined by the trial court, her appeal is, *ipso facto*, solely for the purpose of harassment and indicative of bad faith. In their brief and motion to this court, Usow fails to cite any authority to support their position. See RULE 809.19(1)(e), STATS. The brief contains no cite to the record. See *id.* It contains no statement referencing either oral argument or whether the opinion should be published. See RULE 809.19(1)(c), STATS. Under these circumstances, we decline to consider the motion. RULE 809.83(2), Stats. (noncompliance with rules is grounds for dismissal); see also *Grosskopf Oil, Inc. v. Winter*, 156 Wis.2d 575, 586, 457 N.W.2d 514, 519 (Ct. App. 1990) (we may dispose of arguments summarily if they are not developed in the briefs). Accordingly, the motion for appellate costs is denied.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.